

Jefferson-Pilot Insurance Company vs. Christopher L. Kearney  
Valerie LoftinC-1-02-479  
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<p style="text-align: right;">Page 134</p> <p>1      least a 75 percent loss in his earnings?</p> <p>2      A. I wasn't aware of the percentage of loss of earnings.</p> <p>3      Q. Are you comfortable in concluding from that sentence</p> <p>4      that if that's the case, he's entitled to the full</p> <p>5      benefit for total disability?</p> <p>6      A. You'd have to look back at the definition of total</p> <p>7      disability under the policy.</p> <p>8      Q. Why? We're talking about residual disability. It</p> <p>9      says for residual disability if your loss of earnings</p> <p>10     is at least 75 percent, the full benefit for total</p> <p>11     disability will be payable. Why should we have to</p> <p>12     look back at total disability since we're just talking</p> <p>13     about what's payable for residual disability and your</p> <p>14     document says that on residual disability when your</p> <p>15     loss is more than 75 percent, you get the full benefit</p> <p>16     for total disability, whatever it is, whatever the</p> <p>17     full benefit for total disability is. We don't even</p> <p>18     have to look at what that is right now. But you get</p> <p>19     whatever that is if you have a greater than 75 percent</p> <p>20     loss in residual disability. Isn't that what that</p> <p>21     says?</p> <p>22     MR. ELLIS: Objection.</p> <p>23     A. This is not the contract.</p> <p>24     Q. Okay. That's what this says. I understand this is</p> <p>25     not a contract, but that's what this says, right?</p>	<p style="text-align: right;">Page 136</p> <p>1      Q. I'm not saying it does. I'm just saying that's what</p> <p>2      that sentence says, correct?</p> <p>3      A. That's your interpretation of that sentence.</p> <p>4      Q. What's yours?</p> <p>5      A. I don't have an interpretation.</p> <p>6      Q. Why not?</p> <p>7      A. Because I'm not handling this claim.</p> <p>8      Q. Is yours different than mine?</p> <p>9      A. I don't know.</p> <p>10     Q. Does mine miss the unambiguous intended meaning of</p> <p>11     that sentence?</p> <p>12     A. I can't answer that.</p> <p>13     Q. Okay. Because the lawsuit hinges on that answer or</p> <p>14     because you really disagree with me, which one?</p> <p>15     MR. ELLIS: Objection.</p> <p>16     A. Because I really can't understand your line of</p> <p>17     questioning.</p> <p>18     Q. All right. Even though you say that that document</p> <p>19     isn't controlling and even though you say that you</p> <p>20     can't agree with my interpretation because it's</p> <p>21     beyond -- my interpretation is beyond comprehension,</p> <p>22     isn't that the way your company paid Mr. Kearney from</p> <p>23     1993 through 2002, consistent with my interpretation</p> <p>24     of what we just read?</p> <p>25     A. I'll say again, I have not reviewed the claim file.</p>
<p style="text-align: right;">Page 135</p> <p>1      A. I don't know, because I think you just went back to</p> <p>2      paraphrasing again.</p> <p>3      Q. Okay. I just paraphrased. You can't answer that</p> <p>4      that's what this says? You can't conclude that your</p> <p>5      document upon which you sold Mr. Kearney to give you a</p> <p>6      lot of money says that if his loss of earnings is at</p> <p>7      least 75 percent on residual disability, he gets the</p> <p>8      full benefit for total disability?</p> <p>9      A. That's not what that says.</p> <p>10     Q. I know I didn't read the language exactly, but that's</p> <p>11     what it says. That's what it means, isn't it? Do you</p> <p>12     want me -- I'll read the language again, okay?</p> <p>13     The last sentence in that paragraph says, "If</p> <p>14     the loss of earnings is at least 75 percent, the full</p> <p>15     benefit for total disability will be payable." Did I</p> <p>16     read it correctly that time?</p> <p>17     A. You read it correctly that time.</p> <p>18     Q. Okay. And what that means is, if your loss of</p> <p>19     earnings on residual disability is greater than</p> <p>20     75 percent, you will be paid the full benefit for</p> <p>21     total disability, isn't that right?</p> <p>22     A. I can't answer that.</p> <p>23     Q. Why not?</p> <p>24     A. Because this is not what controls the relationship for</p> <p>25     the payment.</p>	<p style="text-align: right;">Page 137</p> <p>1      My understanding is that we made a mistake in the way</p> <p>2      benefits were paid.</p> <p>3      Q. And the mistake you made is consistent with the way I</p> <p>4      just read that language, correct?</p> <p>5      A. I can't answer that. I don't know.</p> <p>6      Q. Okay.</p> <p>7      MS. FARABOW: Mr. Roberson is here. I just</p> <p>8      wanted to let you know.</p> <p>9      MR. ROBERTS: Thank you.</p> <p>10     Q. How many of these policies like Mr. Kearney's were</p> <p>11     sold?</p> <p>12     A. I don't know.</p> <p>13     Q. Is there any way you could find that out?</p> <p>14     A. I don't know. I don't know whether I could. I don't</p> <p>15     know if that information is available anywhere.</p> <p>16     Q. Are you mindful that the term "residual disability"</p> <p>17     does not exist in the policy Mr. Kearney purchased?</p> <p>18     Without referring to any rider, in the core policy</p> <p>19     there is no reference to residual disability</p> <p>20     whatsoever? Are you mindful of that?</p> <p>21     A. I was unaware of that, no.</p> <p>22     Q. You were not aware of that?</p> <p>23     A. No.</p> <p>24     Q. Do you want to read it to confirm that I'm telling you</p> <p>25     the truth? Why don't you. It's Exhibit 3. I think</p>

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 you have it.</p> <p>2 A. (Witness reviews document)</p> <p>3 (Discussion off the record)</p> <p>4 (Brief recess)</p> <p>5 A. I found one reference to residual disability benefit.</p> <p>6 Q. Where is that?</p> <p>7 A. A medical disclosure authorization.</p> <p>8 Q. That's not the policy. I was talking about the core</p> <p>9 policy from page 1 of the policy through page 6 which</p> <p>10 ends with the signature of the Chairman of the Board</p> <p>11 and Chief Executive Officer and the Secretary.</p> <p>12 A. The application is considered to be a part of the</p> <p>13 policy, but yes, in the preceding pages there was no</p> <p>14 reference that I could find to residual disability</p> <p>15 benefit.</p> <p>16 Q. Page 2 of this contains the table of contents, the</p> <p>17 entire table of contents, and the document has six</p> <p>18 pages that concludes with signatures. Nowhere in</p> <p>19 those six pages is there any reference to residual</p> <p>20 disability, correct?</p> <p>21 A. In those six pages, no.</p> <p>22 Q. There is no reference in those six pages, correct?</p> <p>23 A. There is no reference in those six pages, correct.</p> <p>24 Q. Thank you. All of the definitions in that policy --</p> <p>25 because there is no reference whatsoever to residual</p>	<p style="text-align: right;">Page 140</p> <p>1 A. What did he say?</p> <p>2 Q. That's not what I said. Let me restate the question</p> <p>3 so there's no confusion, no ambiguity. We don't want</p> <p>4 any ambiguity here, okay? Because residual</p> <p>5 disability, that term, is not included in these six</p> <p>6 pages, all the defined terms are couched in terms of</p> <p>7 total disability only, correct?</p> <p>8 A. The policy addresses insureds against loss due to</p> <p>9 total disability.</p> <p>10 Q. Simple question. Can you confirm for me that all of</p> <p>11 the defined terms in this six-page policy are defined</p> <p>12 in the context of total disability or can you not do</p> <p>13 that?</p> <p>14 A. I cannot do that because I'm not that familiar with</p> <p>15 the contract.</p> <p>16 Q. Take as long -- we have seven hours and we have about</p> <p>17 four hours left. If you need all four hours to</p> <p>18 familiarize yourself with the definitions in this</p> <p>19 six-page contract to confirm for me that question, do</p> <p>20 it.</p> <p>21 A. Okay. (Witness reviews document) Can you repeat the</p> <p>22 question.</p> <p>23 MR. ROBERTS: Could you kindly read it back.</p> <p>24 (The last question was read back by the court</p> <p>25 reporter.)</p>
<p style="text-align: right;">Page 139</p> <p>1 disability, all of the definitions are couched in</p> <p>2 terms of total disability, correct?</p> <p>3 A. I don't have personal knowledge of the contents of</p> <p>4 this particular policy --</p> <p>5 Q. Take -- wait, no, hold on. You just took -- we just</p> <p>6 went -- he went to the bathroom. We took about ten</p> <p>7 minutes off the record for you to read it.</p> <p>8 A. And I was looking for residual disability.</p> <p>9 Q. Okay. Now, read it again and confirm for me that</p> <p>10 because residual disability does not exist -- the term</p> <p>11 does not exist in this policy, all of the definitions</p> <p>12 within this policy and that would be applicable are</p> <p>13 defined in the context of total disability, correct?</p> <p>14 A. No.</p> <p>15 Q. Take as long as you like.</p> <p>16 A. I don't agree with that statement.</p> <p>17 Q. Okay. Where is there a definition in these six pages</p> <p>18 that defines a term in the context of a residual</p> <p>19 disability?</p> <p>20 A. You said because there is no disability definition.</p> <p>21 That's the way you prefaced the question. That's what</p> <p>22 confused me.</p> <p>23 Q. That wasn't what I said. Let me restate --</p> <p>24 A. That's what you said. You said because --</p> <p>25 Q. That's not what I said.</p>	<p style="text-align: right;">Page 141</p> <p>1 A. I can confirm that in these six pages that is true.</p> <p>2 Q. Okay. But the company would sell residual disability</p> <p>3 riders to append to this policy, correct?</p> <p>4 A. They would sell an additional residual disability</p> <p>5 benefit.</p> <p>6 Q. That's not a freestanding contract; it needs to append</p> <p>7 itself to some disability insurance policy that was</p> <p>8 principally sold, in this case this policy?</p> <p>9 A. In this case it was, yeah.</p> <p>10 Q. Okay. There's nothing in that six pages of Exhibit 2</p> <p>11 that suggests how you apply those definitions if a</p> <p>12 residual disability is at issue as opposed to total</p> <p>13 disability, correct?</p> <p>14 A. No, this addresses total disability, benefits for</p> <p>15 total disability.</p> <p>16 Q. Again I asked you a negative question and your first</p> <p>17 response was no, so if I have someone else read your</p> <p>18 transcript at the trial, it's going to look odd.</p> <p>19 There's nothing in the six pages that</p> <p>20 clarifies for a policyholder the applicability of</p> <p>21 those defined terms in those six pages when residual</p> <p>22 disability is the issue, correct?</p> <p>23 A. I repeat that I have found no reference to residual</p> <p>24 disability within these six pages.</p> <p>25 Q. Okay. But there are defined terms in that six pages</p>

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<p style="text-align: right;">Page 142</p> <p>1 that do apply in cases of residual disability; isn't 2 that true?</p> <p>3 A. I don't know.</p> <p>4 Q. Okay. Can you look at the definition of elimination 5 period for me on page 3. Do you see the definition of 6 elimination period?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Is there a separate definition of elimination 9 period that you're aware of in any rider, proposal, 10 policy that applies to residual disability?</p> <p>11 A. I don't know.</p> <p>12 Q. So you don't know if this elimination period in the 13 core policy on page 3 of the policy applies in cases 14 of residual disability?</p> <p>15 A. I think the contract speaks for itself.</p> <p>16 Q. Okay. Does the contract contain any other definition 17 of elimination period that applies to residual 18 disability instead of total disability?</p> <p>19 A. I don't know.</p> <p>20 Q. Okay. Can you turn to the residual disability rider 21 which is Exhibit 4. Do you see the second column 22 there, the heading is Residual Disability Benefit?</p> <p>23 A. Yes.</p> <p>24 Q. And then there's a sentence with a sub A, sub B. The 25 next sentence says, "This benefit will begin (a) the</p>	<p style="text-align: right;">Page 144</p> <p>1 applies to total disability is adopted for residual 2 disability as well?</p> <p>3 A. I think the contract speaks for itself.</p> <p>4 Q. How about maximum benefit period, can you turn to page 5 3 of the policy and locate the definition of maximum 6 benefit period for me.</p> <p>7 A. Yes.</p> <p>8 Q. Okay. It's defined in the context of total 9 disability, correct?</p> <p>10 A. I think the contract speaks for itself.</p> <p>11 Q. Are the words "total disability" in the definition?</p> <p>12 A. The words "total disability" are in the maximum 13 benefit period definition.</p> <p>14 Q. Capital T for total, capital D for disability?</p> <p>15 A. Yes.</p> <p>16 Q. And the words "residual disability" don't reside in 17 the definition, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Now, can you turn to the residual disability rider. 20 That's Exhibit 4. We were in the second column 21 before. We were under the sentence "This benefit will 22 begin." The next paragraph, do you see that "during," 23 it starts with "during"?</p> <p>24 A. Yes.</p> <p>25 Q. "During a period of residual disability,</p>
<p style="text-align: right;">Page 143</p> <p>1 next day after the end of the Elimination Period shown 2 in the schedule." So let's turn to the schedule. The 3 schedule is attached to Exhibit 2. The policy is 4 Exhibit 2 -- I'm sorry, Exhibit 3. The policy is 5 Exhibit 3.</p> <p>6 A. That's what I was looking for. Okay.</p> <p>7 Q. Turn to the schedule. Are you at the schedule?</p> <p>8 A. What page are you on?</p> <p>9 Q. Do you know what the schedule is? The seventh or 10 eighth page of the exhibit, at the top says Schedule?</p> <p>11 A. Okay.</p> <p>12 Q. Okay. Are we in agreement that the only reference to 13 elimination period on the schedule is under the 14 heading -- the second line underneath Monthly Benefit, 15 which all fall under the heading for Total Disability 16 Due to, and then for Injury, elimination period is 90 17 days and for sickness the elimination period is 90 18 days and there's no other reference to elimination 19 period on the schedule, is there?</p> <p>20 A. I think the schedule speaks for itself.</p> <p>21 Q. Do you see any other reference to elimination period 22 other than the one I just referenced on the schedule?</p> <p>23 A. No, I do not.</p> <p>24 Q. Okay. So can we agree that the total disability 25 policy, defined term of elimination period as it</p>	<p style="text-align: right;">Page 145</p> <p>1 Jefferson-Pilot will continue to pay the residual 2 disability monthly benefit for each month you are 3 residually disabled until the combination of total 4 disability and residual disability benefits equal the 5 maximum benefit period.</p> <p>6 Is there anywhere a defined maximum benefit 7 period for residual disability that's independent from 8 the maximum benefit period definition we just saw in 9 the policy?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. Okay. Can you turn to the schedule again, Exhibit 3. 12 We were at elimination period the last time we visited 13 this document. The third line, the next line says 14 Maximum Benefit Period. Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. And that, too, falls under the heading for Total 17 Disability Due to either injury or sickness, and then 18 there's three different maximum benefit periods for 19 periods of continuous total disability. Do you see 20 that?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Is there anywhere that you're aware of in any policy, 23 proposal, rider that defines a maximum benefit period 24 independent of total disability and exclusively for 25 residual disability?</p>

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<p style="text-align: right;">Page 146</p> <p>1 A. Not that I'm aware of.</p> <p>2 Q. Is there a maximum benefit period for residual</p> <p>3 disability?</p> <p>4 A. I can't answer that question. I think the contract</p> <p>5 speaks for itself.</p> <p>6 Q. Okay. I do, too. Can you turn to Exhibit 3, the</p> <p>7 policy, page 3, the Definitions section, and here I'd</p> <p>8 like to focus in on the defined term of Monthly</p> <p>9 Benefit. Do you see that there in the second column</p> <p>10 of Definitions?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And it says, "Monthly benefit means the amount shown</p> <p>13 in the schedule or one-thirtieth of such amount for</p> <p>14 each day of any period of total disability that does</p> <p>15 not equal a whole month." Did I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. There's no reference to residual disability in that</p> <p>18 definition, correct?</p> <p>19 A. No, there's not.</p> <p>20 Q. Now let's turn to the residual disability rider. In</p> <p>21 the first column, three-fourths of the way down, there</p> <p>22 is a paragraph that starts, "Residual Disability</p> <p>23 Monthly Benefit," almost all the way at the bottom.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 148</p> <p>1 is there any reference to monthly disability other</p> <p>2 than those?</p> <p>3 A. I don't know, not to my personal knowledge.</p> <p>4 Q. Okay. Back to Exhibit 3, page 3, the Definitions</p> <p>5 section. Actually I want to focus on the next</p> <p>6 heading, Benefit Provisions.</p> <p>7 A. Which page are you on?</p> <p>8 Q. Page 3 of Exhibit 3. The heading is Benefit</p> <p>9 Provisions and the first subsection says Benefits for</p> <p>10 Total Disability Due to Injury and the second</p> <p>11 subsection says Benefits for Total Disability Due to</p> <p>12 Sickness, right?</p> <p>13 A. Yes.</p> <p>14 Q. In neither of those paragraphs and subsections is</p> <p>15 there reference to residual disability. There's</p> <p>16 reference only to total disability, right?</p> <p>17 A. Yes.</p> <p>18 Q. But you would agree with me that residual disability</p> <p>19 benefits are available when residual disability is due</p> <p>20 to an injury or due to a sickness, right?</p> <p>21 A. I think the contract speaks for itself.</p> <p>22 Q. Is there any section of the contract, riders, policies</p> <p>23 that specifically sets forth a different definition</p> <p>24 that applies only in residual disability for those</p> <p>25 items?</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. The sentence above that says, "Monthly benefit is the</p> <p>2 amount shown in the schedule as such." Do you see</p> <p>3 that?</p> <p>4 A. Yes.</p> <p>5 Q. Just like the policy, it refers you to the schedule.</p> <p>6 Now let's turn to the schedule.</p> <p>7 Other than the first line under the heading</p> <p>8 "For Total Disability Due To," then the first line</p> <p>9 underneath that says Monthly Benefit. Do you see any</p> <p>10 reference to monthly benefit on this document other</p> <p>11 than that reference?</p> <p>12 A. I don't see another reference to monthly benefit on</p> <p>13 that page.</p> <p>14 Q. Let's go to the proposal, Exhibit 14. Page 2,</p> <p>15 Exhibit 14. The first item underneath Basic</p> <p>16 Benefits -- and we've talked about basic benefits a</p> <p>17 long time before, but the first line says, "Monthly</p> <p>18 Benefit for Total Disability," right?</p> <p>19 A. Yes.</p> <p>20 Q. And it says that Mr. Kearney's monthly benefit for</p> <p>21 total disability is 2,125, right?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know of anywhere in the policy, proposal,</p> <p>24 riders, any other marketing material that defines</p> <p>25 monthly benefit for residual disability other than --</p>	<p style="text-align: right;">Page 149</p> <p>1 A. Not to my personal knowledge.</p> <p>2 Q. Only the next page 4 of Exhibit 3 there's a heading</p> <p>3 called Recurring Disabilities. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Is it possible to have a residual disability that's a</p> <p>6 recurring disability?</p> <p>7 A. I can't answer that. I think the contract speaks for</p> <p>8 itself.</p> <p>9 Q. You don't know if your company pays residual</p> <p>10 disability benefits for people who suffer residual</p> <p>11 disabilities that are intermittent and recurring?</p> <p>12 A. It would depend on the language in the policy of --</p> <p>13 Q. Are you mindful of any definition of recurring</p> <p>14 disability that applies exclusively to residual</p> <p>15 disability instead of total disability as this one is?</p> <p>16 A. I'm not mindful of any definitions.</p> <p>17 Q. How about the definition of surgical transplant in the</p> <p>18 next column of page 4 of Exhibit 3? It's defined</p> <p>19 exclusively to apply to total disability, but isn't it</p> <p>20 possible that someone could suffer a residual</p> <p>21 disability as a result of a surgical transplant?</p> <p>22 A. I think the contract speaks for itself.</p> <p>23 Q. Do you have know of any surgical transplant definition</p> <p>24 in the policy or the rider that apply exclusively to</p> <p>25 residual disability?</p>

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<p>1 A. Not to my personal knowledge.</p> <p>2 Q. Would you turn to the schedule for me. There's no 3 express statement on this schedule that the cost of 4 living increase and the Social Security Supplement 5 benefit do not apply in periods of residual 6 disability; isn't that correct?</p> <p>7 A. I think the contract speaks for itself.</p> <p>8 Q. Do you see any express language on this schedule that 9 says that COLA and Social Security don't apply to 10 residual disability?</p> <p>11 A. I don't see any reference to residual disability.</p> <p>12 Q. There is a reference to residual disability. This 13 schedule identifies that Mr. Kearney purchased the 14 additional benefit of residual disability. Do you see 15 that?</p> <p>16 A. I'm talking about at the top of the page.</p> <p>17 Q. Correct, but on this page of the schedule, the only 18 reference to residual disability on the schedule is 19 the suggestion that Mr. Kearney actually paid your 20 company money to buy that benefit, right?</p> <p>21 A. I agree that there is a reference to residual 22 disability under the Additional Benefit Provisions 23 Included, If Any.</p> <p>24 Q. You agree that there's a what? I'm sorry?</p> <p>25 A. There's a reference to residual disability under the</p>	<p>1 did not see those words in the policy.</p> <p>2 Q. Is there anything in the six-page policy or the 3 schedule that suggests what I said without using my 4 words?</p> <p>5 A. I think the contract speaks for itself.</p> <p>6 Q. Okay. Is there anything in the policy or the schedule 7 that suggests what I said without using my express 8 language?</p> <p>9 A. I think the policy speaks for itself.</p> <p>10 Q. Does the policy say that?</p> <p>11 A. I think the policy speaks for itself.</p> <p>12 Q. Does the policy say what I said?</p> <p>13 A. The policy speaks for itself.</p> <p>14 Q. Okay, fine, the policy speaks for itself, fine. Can 15 you tell me that the policy says that COLA and Social 16 Security Supplement in an express manner don't apply 17 to residual disability?</p> <p>18 A. What I'm saying is, the sentence that you just used in 19 your earlier question is not contained in this policy. 20 The policy speaks for itself.</p> <p>21 Q. I can ask as many questions as I want and I understand 22 I asked you a question before. I'm going to ask you a 23 new question.</p> <p>24 A. Okay.</p> <p>25 Q. Okay. Is there anything that expressly says,</p>

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<p>1 Additional Benefit Provisions Included, If Any.</p> <p>2 Q. Is there anything on this schedule that explicitly 3 says the cost of living increase and Social Security 4 Supplement benefit don't apply for residual 5 disability?</p> <p>6 A. Those words don't appear on this schedule.</p> <p>7 Q. Say again.</p> <p>8 A. Those words don't appear -- that you just said don't 9 appear on the schedule.</p> <p>10 Q. The explicit statement that they don't apply during 11 residual disability does not appear on the schedule?</p> <p>12 A. What you just said does not appear on the schedule.</p> <p>13 Q. I asked another question.</p> <p>14 A. Okay.</p> <p>15 Q. There is nothing on the schedule that explicitly says 16 that the cost of living increase and Social Security 17 Supplement do not apply for residual disability, 18 correct?</p> <p>19 A. There is nothing that says that the cost of living -- 20 what you just said is not written on this schedule.</p> <p>21 Q. You agree with me?</p> <p>22 A. That it's not written on the schedule, yes.</p> <p>23 Q. Okay. And there's nothing in the six-page policy that 24 says it either, right?</p> <p>25 A. That is written with the words that you just used, I</p>	<p>1 explicitly says, if you're on residual disability, you 2 do not get COLA and you do not get Social Security 3 Supplement? Is that anywhere in the policy?</p> <p>4 A. In these six pages?</p> <p>5 Q. Anywhere. Is there anywhere that it says -- do you 6 want to take a break?</p> <p>7 A. No.</p> <p>8 Q. Okay. Is there anything in the contract, whatever you 9 consider the contract to be -- you don't consider the 10 proposal to be the contract, fine. Whatever you 11 believe the contract to be, is there anything in there 12 that says expressly, a person on residual disability 13 is not entitled to COLA or the Social Security 14 Supplement benefit?</p> <p>15 A. There is nothing in the contract that says what you 16 just said.</p> <p>17 Q. Okay. Is there anything in the contract that says 18 what I said explicitly without using the words I used?</p> <p>19 A. I think the contract speaks for itself.</p> <p>20 Q. You can't point me to anything that is expressly 21 saying in effect what I said, maybe using different 22 words?</p> <p>23 A. I can't point to anything in the contract saying what 24 you said.</p> <p>25 Q. Okay.</p>

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1 A. Otherwise the contract speaks for itself.		1 words are expressed in the contract?	
2 Q. Okay. But my question -- you got to answer my		2 A. I think the contract speaks for itself.	
3 question and my question said that different words can		3 Q. Okay. Can you point me to anything where the contract	
4 be used. The English language is made up of millions		4 is speaking for itself that says what I said using	
5 of words. Some of those words have the same meaning.		5 potentially different words?	
6 So don't get hung up on the words I use.		6 A. No, I can't.	
7 Is there anything in what you consider to be		7 Q. Okay. Can you turn to Exhibit 4, only instead of	
8 the contract that explicitly says, using the words I		8 looking at the Residual Disability rider, this time	
9 used or other words, what I said, that is, COLA,		9 let's look at the third page, the Additional Increase	
10 Social Security don't apply to residual disability?		10 in Benefits Rider. Is there anything on the	
11 A. And I answered the question, I think the contract		11 Additional Increase in Benefits Rider that says	
12 speaks for itself.		12 unambiguously that it is not applicable for residual	
13 Q. You can't point me to any express language in the		13 disability?	
14 policy that says that, correct?		14 A. There is no reference to residual disability stated in	
15 A. I can't point to any express language that says what		15 this document.	
16 you just said.		16 Q. Using the two words "explicit" and "express" as a	
17 MR. ROBERTS: Can we take break so I can get		17 frame of reference, is there anything that says	
18 a videographer in here and ask that question again?		18 anything to that effect?	
19 MR. ELLIS: Do whatever you like.		19 A. There is no reference to residual disability in this	
20 MR. ROBERTS: Do you have a videographer		20 document.	
21 handy?		21 Q. That wasn't my question. Is there anything that	
22 (Discussion off the record)		22 references -- whatever uses of language there may be,	
23 Q. Okay. Go ahead.		23 is there anything on this rider that suggests,	
24 MR. ELLIS: Go ahead what? There's no		24 references, states, that it does not apply for	
25 question pending.		25 residual disability?	
	Page 155		Page 157
1 MR. ROBERTS: I'm not talking to you.		1 MR. ELLIS: She's answered the question.	
2 Q. Let's try this again, okay? Do you understand that		2 A. You'd have to read the entire contract. The contract	
3 the English language has millions of words?		3 speaks for itself.	
4 A. Yes.		4 Q. You would agree with me that if you just look at this	
5 Q. Okay. Do you understand that some of those words have		5 rider, it does not exclude its application in residual	
6 meanings and the meaning of those words is the same		6 disability, correct?	
7 meaning as other words?		7 A. I would not agree with that. I said that the contract	
8 How about this. "Express" and "unambiguous"		8 speaks for itself and you have to take the contract in	
9 are two different words, correct?		9 its entirety.	
10 A. "Express" and "unambiguous" are two different words, I		10 Q. You have to answer my questions, okay --	
11 agree with that.		11 A. That's what I'm trying --	
12 Q. How about "express" and "explicit," those are two		12 Q. -- and I'm looking at this page, all right?	
13 different words, right?		13 A. Yes.	
14 A. They're two different words.		14 Q. Where on this page does it imply, suggest, state	
15 Q. They have the same meaning, right?		15 ambiguously, unambiguously, that this benefit doesn't	
16 A. In some contexts.		16 apply for residual disability?	
17 Q. Okay. Using that as a frame of reference, you would		17 MR. ELLIS: Object to the form.	
18 agree with me using my words that there is nothing in		18 A. It does not state what you just said on this rider.	
19 the policy that says using my words, "COLA and Social		19 Q. Okay. Does it state what I just said using words	
20 Security Supplement benefit do not apply when you're		20 other than the words I just said?	
21 on residual disability." Those words aren't in the		21 A. I can't answer that question.	
22 agreement, right?		22 Q. Okay. Using "explicit" and "express" as our frame of	
23 A. Those words are not in the agreement.		23 reference -- forget about the words I just said. The	
24 Q. Using my example of "express" and "explicit" as a		24 meaning I conveyed to you in the question, is it	
25 frame of reference, are there any other way that my		25 stated in words other than the words that I used?	

40 (Pages 154 to 157)

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<p>1 A. I think the contract speaks for itself.</p> <p>2 Q. So they're not?</p> <p>3 A. That's not what I said. I said I think the contract 4 speaks for itself.</p> <p>5 Q. Okay. Where on this page using whatever words may 6 exist does it say that this benefit doesn't apply in 7 residual disability?</p> <p>8 A. I think you have to read the rider in the context of 9 the whole policy and you're reading just this one 10 page.</p> <p>11 Q. Okay. So the rider itself doesn't say that, correct?</p> <p>12 A. What I'm saying is, you have to read the rider in the 13 context of the whole contract.</p> <p>14 Q. The rider itself doesn't say that, correct?</p> <p>15 A. The rider itself does not make any reference to 16 residual disability.</p> <p>17 Q. Okay. Would you turn to the Residual Disability 18 rider. First column, just past the halfway point, 19 there's a sentence that says "The prior monthly 20 income." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. "The prior monthly income will be adjusted at the same 23 time and by the same percentage as the Increase in 24 Benefits or Increase in Benefits for Total Disability 25 provision, whichever is applicable, of this policy."</p>	<p>1 record.</p> <p>2 MR. ELLIS: Are you finished?</p> <p>3 Q. Ms. Loftin, do you agree with me that what this 4 paragraph is telling someone you're getting money 5 from, a policyholder, that what the company will do is 6 make two adjustments at the same time. First, there's 7 an adjustment to the prior monthly income, and it's 8 done at the same time, the same percentage, as either 9 the increase in benefits or increase in benefits for 10 total disability, whichever is applicable, right?</p> <p>11 A. I agree that the policy speaks for itself.</p> <p>12 Q. Okay. Thank you. The way I read it is the way it 13 speaks, right?</p> <p>14 A. I agree that the policy speaks for itself.</p> <p>15 Q. Have you ever heard it speak?</p> <p>16 A person can't at the same time receive both 17 total disability benefits and residual disability 18 benefits, can they?</p> <p>19 A. I don't know.</p> <p>20 Q. Why don't you just say, The policy speaks for itself, 21 to that question?</p> <p>22 A. Because you weren't asking me to a specific policy.</p> <p>23 Q. Okay.</p> <p>24 A. You were asking me a general question.</p> <p>25 Q. How about this policy?</p>
Page 159	Page 161

<p style="text-align: right;">Page 162</p> <p>1 A. Yes, I am.  2 Q. Okay. The second paragraph -- the first paragraph has  3 three subsections. The second paragraph says,  4 "However, the Social Security Supplement benefit shall  5 not be payable unless," right?  6 A. That's what it says, yes.  7 Q. Okay. So in this particular rider the company went to  8 the effort to advise the policyholder when it does not  9 apply, right?  10 A. Yes.  11 Q. And does it say in there that it doesn't apply during  12 residual disability?  13 A. There's no reference in here to residual disability.  14 Q. So the company went to the effort to advise the  15 policyholder when the Social Security Supplement  16 benefit doesn't apply, yet it made no reference to  17 residual disability, correct?  18 A. No, that's not the way I read it.  19 Q. Okay. Where is the reference to residual disability?  20 A. When you said that this paragraph says when Social  21 Security Supplement benefit will not apply --  22 Q. I thought we were on the same page --  23 A. It says, "shall not be payable unless," so --  24 Q. Okay. So there are circumstances outlined here when  25 it's not payable, right?</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. -- so that --  2 MR. ROBERTS: Can we go off the record for a  3 second?  4 MR. ELLIS: No. Stay on the record.  5 MR. ROBERTS: We're going to go off the  6 record.  7 MR. ELLIS: No.  8 MR. ROBERTS: Okay. Shut up.  9 Q. Okay. Ready?  10 A. Yes, sir.  11 Q. We've already established that everything on the  12 schedule -- and there's a whole bunch of things on the  13 schedule that apply to residual disability -- and  14 everything in the policy -- and there's a whole bunch  15 of things in the policy, like elimination period,  16 monthly benefit -- we went through this -- that,  17 although couched in terms of total disability, apply  18 to residual disability, so that doesn't make a  19 difference here. Is there anything on this rider that  20 says Social Security Supplement is not payable if  21 you're residually disabled?  22 A. I think the contract speaks for itself.  23 Q. Okay.  24 MR. ROBERTS: Bill, I won't say shut up if  25 you do what you're supposed to do and simply say</p>
<p style="text-align: right;">Page 163</p> <p>1 A. There are circumstances outlined here that I read as  2 conditions to payment.  3 Q. Okay. Unless those conditions are satisfied, it  4 doesn't get paid, so you're advising somebody what  5 conditions need to exist for this to be paid, right?  6 A. That's what it appears to be saying.  7 Q. And you don't say in here that you must be on total  8 disability as opposed to residual disability for it to  9 apply, right? That condition is not included?  10 A. There is a reference to the requirement of total  11 disability.  12 Q. Okay. Does the reference to total disability say you  13 must be on total disability and you cannot be on  14 residual disability for this benefit to be payable?  15 A. It says, "The monthly benefit of this policy will be  16 increased by the amount of the Social Security  17 Supplement benefit shown in the schedule if you are  18 entitled to receive monthly benefits for total  19 disability."  20 Q. Right. Everything is defined in the context of total  21 disability. I mean, do you want to go through the 80  22 of them again? Everything on the schedule, everything  23 in the policy, they're all defined in the context of  24 total disability --  25 MR. ELLIS: Is that a question or a speech?</p>	<p style="text-align: right;">Page 165</p> <p>1 "objection" to preserve the objection for  2 determination by a judge later in the case. Anything  3 you say after the word "objection" -- this is like the  4 80th time I've told you this -- anything that comes  5 after the word "objection" is improper coaching of the  6 witness, and you know it, and you're sitting there  7 like a Cheshire cat smiling with your arms above your  8 head like you know something that I don't know, and  9 what we both know is that you don't follow procedure.  10 In fact, Judge Beckwith said to you three  11 weeks ago, Mr. Ellis, you have filed five false  12 declarations in a lawsuit.  13 MR. ELLIS: Are you finished? Judge Beckwith  14 never said it, you did.  15 MR. ROBERTS: She said yeah, you have. What  16 about that?  17 MR. ELLIS: No, I don't believe you're right.  18 MR. ROBERTS: It was recorded.  19 MR. ELLIS: Good. Bring it up. Now are you  20 finished or do you want to keep going?  21 MR. ROBERTS: No. Do you have any lawsuits  22 going on? I want to add as cocounsel in whatever case  23 you have.  24 (Defendant's Exhibit No. 15 was marked for  25 identification by Mr. Roberts.)</p>

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<p style="text-align: right;">Page 166</p> <p>1 Q. Let's see, Exhibit 15, is this your sworn testimony 2 from the King case? Have you had a chance to take a 3 look at your deposition in the King case? 4 MR. ELLIS: Do you have a copy for me? 5 MR. ROBERTS: I don't. 6 MR. ELLIS: I thought that was a requirement. 7 MR. ROBERTS: You can get a copy later, 8 Counsel. I'm sure your client has a copy to lend you. 9 MR. ELLIS: Actually I thought whether I had 10 a copy or not made no difference. It's your 11 deposition -- 12 MR. ROBERTS: Call the judge and complain. 13 MR. ELLIS: Just finding out what your rules 14 are. 15 MR. ROBERTS: I don't have my own civil 16 procedure rules -- 17 MR. ELLIS: You do. Then where's my copy? 18 MR. ROBERTS: -- since you haven't read the 19 Code of Professional Responsibility or the Rules of 20 Civil Procedure. 21 Q. Is that your deposition transcript of sworn testimony 22 taken in the King case? 23 A. Yes. 24 Q. Okay. Thanks. Can you turn back to the policy, 25 Exhibit 3. Now, the policy sets forth conditions</p>	<p style="text-align: right;">Page 168</p> <p>1 benefits if your loss is less than 20 percent from 2 pre-disability earnings, right? 3 A. Residual disability benefits will be paid pursuant to 4 the terms of the policy. 5 Q. Okay. Let's turn to the rider. Are you mindful that 6 there's a 20 percent loss threshold before a person is 7 entitled to benefits? The second column, Limitations 8 is the heading, "The residual disability benefit will 9 not be paid for any period of time during which your 10 loss of monthly income is not at least 20 percent of 11 your prior monthly income"; is that right? 12 A. Yes. 13 Q. It also limits benefits in the event that you're not 14 under the care and attendance of a doctor, right? 15 A. Benefits will not be paid for any period of time that 16 you're not under the care and attendance of a doctor. 17 Q. So the residual disability rider sets forth 18 unambiguously conditions that, if exist, don't entitle 19 you to benefits, right? 20 A. Could you repeat that. 21 MR. ROBERTS: Can you read it back for her. 22 (The last question was read back by the court 23 reporter.) 24 A. I think that the contract speaks for itself. 25 Q. Are you aware of anyone being criticized or</p>
<p style="text-align: right;">Page 167</p> <p>1 that, if applicable, don't entitle a policyholder to 2 benefits. For example, during the elimination period 3 you don't get benefits, right? 4 A. Could you say that again, please. 5 Q. The policy sets forth conditions that, if they exist, 6 you're not entitled to benefits. For example, during 7 the elimination period you're not entitled to 8 benefits, right? 9 A. Yes. 10 Q. And after the maximum benefit duration period you're 11 not entitled to benefits, right? 12 A. Yes. 13 Q. You're not entitled to benefits for intentionally 14 inflicted wounds, right? 15 A. I don't have any personal knowledge of that one. 16 Q. If you'd turn to page 4, the Limitations and 17 Exclusions provision. The second column says the 18 policy doesn't cover any loss caused by war, 19 self-inflicted injury that's intentional, injuries or 20 sicknesses occurring where you're in the military 21 service other than active duty for training purposes 22 only for less than 60 days, normal pregnancy or 23 resulting childbirth, right? 24 A. That's what the policy says, yes. 25 Q. And the residual disability benefit doesn't pay</p>	<p style="text-align: right;">Page 169</p> <p>1 disciplined for the manner in which they handled Mr. 2 Kearney's claim? 3 A. No, I am not. 4 Q. In fact, nobody was fired for making those years and 5 years of mistakes? 6 A. I don't know. 7 Q. Has anyone quantified what the result of those 8 mistakes were monetarily to Jefferson-Pilot? 9 A. I believe they were quantified in the pleadings. 10 Q. Okay. No one was criticized or disciplined or 11 counseled for having caused Jefferson-Pilot to lose so 12 much money? 13 A. I don't know. 14 Q. Are there any internal controls regarding benefit 15 payments? Do you audit internally your claim 16 administrators' performances? 17 A. Yes. 18 Q. Okay. Do you know if Mr. Kearney's mistaken payments 19 over eight or nine years or ten years were ever 20 audited? 21 A. I don't know. 22 (Defendant's Exhibit No. 16 was marked for 23 identification by the reporter.) 24 MR. ELLIS: Now you are way beyond the 25 30(b)(6).</p>

43 (Pages 166 to 169)

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<p style="text-align: right;">Page 170</p> <p>1 Q. I've marked as Exhibit 16 a document titled Practical 2 Disability Claims Management Techniques which purports 3 to be authored by a gentleman named Dominick 4 LaGravinese and it sets forth practical disability 5 claims management techniques. Could you read through 6 this and tell me if you would disagree with any of 7 Mr. LaGravinese's statements of what are practical 8 disability claims management techniques.</p> <p>9 A. If I would disagree?</p> <p>10 Q. Uh-huh.</p> <p>11 A. Where --</p> <p>12 Q. Read through this and if you come across something 13 that, you know, you disagree with, just tell me, and 14 if you don't disagree with it, just continue reading 15 on.</p> <p>16 A. (Witness reviews document) (Brief recess)</p> <p>17 Q. Okay. You've finished reading that document 18 Exhibit 16?</p> <p>19 A. Yes.</p> <p>20 Q. Is there anything in there that you would disagree 21 with?</p> <p>22 A. From the standpoint of --</p> <p>23 Q. It's about claim administration practices.</p> <p>24 A. No.</p>	<p>1 scope of the 30(b)(6) Notice.</p> <p>2 MR. ROBERTS: It has to do with the 3 administration of the claim. I asked for the person 4 who had knowledge of the administration of the claim.</p> <p>5 MR. ELLIS: Didn't (inaudible) JP that has 6 that that you're not already getting.</p> <p>7 MR. ROBERTS: Whatever, Big Brother.</p> <p>8 Q. I'm going to read to you a sentence and I want your 9 judgment of what it may mean in the context of this 10 case. On the second page, the second paragraph, 11 halfway through in the middle of the line, the ninth 12 line, there's a sentence that says, "In order to strip 13 Mr. Kearney of the ability to allege bad faith or at 14 least best position ourselves to defend such a claim, 15 it's my recommendation that we continue to pay Mr. 16 Kearney the monthly amount we have been paying under a 17 full and complete reservation of rights 18 contemporaneous with our pursuit of a declaratory 19 judgment action." Is that why Mr. Kearney's benefits 20 have continued at the June 2001 level through the 21 course of this lawsuit?</p> <p>22 MR. ELLIS: Objection.</p> <p>23 A. Is what why?</p> <p>24 Q. In order to strip Mr. Kearney of the ability to allege 25 bad faith or at least best position the company to</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. Are you mindful that Bill Dempsey at Employers 2 Reinsurance Corporation sought a legal opinion about 3 whether or not COLA applied during a residual 4 disability before this lawsuit was filed?</p> <p>5 A. I'm not aware of that.</p> <p>6 Q. Do you know why it would be if your \$50,000-a-year 7 claim people can unambiguously determine that COLA 8 doesn't apply, why Mr. Dempsey as a lawyer would need 9 to get some legal opinion about its applicability?</p> <p>10 A. I don't know. (Defendant's Exhibits No. 17 and 18 were 11 marked for identification by Mr. Roberts.)</p> <p>12 Q. We'll get back to 17 later. I'll show you Exhibit 18. 13 It's a letter from Geraldine Johnson to Mr. Dempsey. 14 Have you ever seen this letter before?</p> <p>15 MR. ELLIS: Objection. This letter was 16 obviously attorney-client privilege and was produced 17 in error.</p> <p>18 MR. ROBERTS: Not under Boone versus Vanliner 19 in Ohio under bad faith cases.</p> <p>20 Q. Have you ever seen this letter before?</p> <p>21 A. No.</p> <p>22 Q. Why don't you take a moment to review it.</p> <p>23 A. (Witness reviews document)</p> <p>24 MR. ELLIS: I'll also object as beyond the</p>	<p>1 defend such a claim.</p> <p>2 A. The reason that we're continuing to pay the benefit is 3 that we're seeking a declaratory judgment action from 4 the Court and we did not want to be held in bad faith 5 for denying the benefit before we got such a 6 declaration from the Court.</p> <p>7 Q. Okay. So the only reason that you've maintained 8 paying him the May 2001 level of benefits as opposed 9 to completely refusing to pay him any COLA or any 10 Social Security Supplement is to strip him of the 11 ability to allege bad faith or at least best position 12 the company to defend such a claim --</p> <p>13 MR. ELLIS: Objection, misstates --</p> <p>14 Q. -- is that right?</p> <p>15 A. Those were the statements in this letter. My 16 understanding of the reason we have continued to pay 17 the benefit is because we are attempting to handle the 18 claim in a good faith manner and not deny the claim or 19 cut off benefits until we've gotten a declaration from 20 the Court.</p> <p>21 Q. From whom did you gain this understanding and when, 22 because my understanding is, you didn't know anything 23 about it until yesterday.</p> <p>24 A. From the pleadings.</p> <p>25 Q. Oh, from reading the pleadings last night, you</p>

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1 concluded that Geraldine Johnson's advice to Employers  
2 Reinsurance back in December 2001 isn't the reason  
3 that payments have been maintained; you concluded  
4 while reading the pleadings with your children last  
5 evening that it's just because you're in good faith;  
6 it's not to strip Mr. Kearney of the ability to allege  
7 bad faith?

8 MR. ELLIS: Objection.

9 A. You're asking me why I think we have continued to pay  
10 the benefits.

11 Q. Okay.

12 A. And that's why I think we have continued to pay the  
13 benefits.

14 Q. That's speculation on your part. You don't know why.

15 A. That we're continuing to pay the benefits?

16 Q. Yeah, at an amount that you think is improper. You  
17 assert that what he's getting today is improper, yet  
18 you're continuing to pay him what you believe to be an  
19 improper benefit?

20 A. Until we can get a declaration from the Court.

21 Q. And you're speculating that the reason you're paying  
22 him a benefit which is inconsistent with what you  
23 think the policy provides isn't to strip him of the  
24 ability to allege bad faith, but some other reason?

25 MR. ELLIS: Objection.

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1  
2 \_\_\_\_\_  
3 Signature of the Witness  
4  
5 SUBSCRIBED and SWORN TO before me this \_\_\_\_\_ day of  
6  
7 \_\_\_\_\_, 2004.

NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

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1 Q. Is that right?

2 A. The reason is to continue to act in good faith.

3 Q. Okay. Is your review of the file consistent with  
4 Ms. Johnson's conclusion that Mr. Kearney's mental  
5 health is declining?

6 A. I haven't reviewed the file.

7 Q. Okay. She concludes by saying, "Bill, I know that you  
8 need to review this information with Jefferson-Pilot."

9 Do you know if Mr. Dempsey ever discussed with  
10 Jefferson-Pilot the contents of this letter?

11 A. I don't know.

12 Q. Okay. Let me show you Exhibit 17. I've not been  
13 provided with the whole claims file and a motion to  
14 compel -- are you mindful that a motion to compel has  
15 been filed?

16 A. No, I wasn't.

17 Q. Okay. And there's additional information that's not  
18 been supplied to me, as I referenced to your counsel  
19 in my letter of April 28 which I've marked as  
20 Exhibit 17.

21 MR. ROBERTS: Because there's not been a full  
22 disclosure of the information that's been requested,  
23 we're going to conclude this deposition now subject to  
24 reconvening. Thank you.

25 (Deposition recessed at 5:00 p.m.)

## ERRATA SHEET

RE: Jefferson-Pilot v. Kearney

DEPOSITION OF: Valerie Loftin

4 Please read this original deposition with  
5 care, and if you find any corrections or changes you  
6 wish made, list them by page and line number below.  
7 DO NOT WRITE IN THE DEPOSITION ITSELF. Return the  
8 deposition to this office after it is signed. We  
9 would appreciate your prompt attention to this matter.

10 To assist you in making any such  
11 corrections, please use the form below. If  
12 supplemental or additional pages are necessary, please  
13 furnish same and attach them to this errata sheet.

Page \_\_\_\_ Line \_\_\_\_ should read:

Reason for change \_\_\_\_\_

Page \_\_\_\_ Line \_\_\_\_ should read:

Reason for change \_\_\_\_\_

Page \_\_\_\_ Line \_\_\_\_ should read:

Reason for change \_\_\_\_\_

Page \_\_\_\_ Line \_\_\_\_ should read:

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1 Page \_\_\_\_ Line \_\_\_\_ should read:

2 Reason for change \_\_\_\_\_

3 Page \_\_\_\_ Line \_\_\_\_ should read:

4 Reason for change \_\_\_\_\_

5 Page \_\_\_\_ Line \_\_\_\_ should read:

6 Reason for change \_\_\_\_\_

7 Page \_\_\_\_ Line \_\_\_\_ should read:

8 Reason for change \_\_\_\_\_

9 Page \_\_\_\_ Line \_\_\_\_ should read:

10 Reason for change \_\_\_\_\_

11 Page \_\_\_\_ Line \_\_\_\_ should read:

12 Reason for change \_\_\_\_\_

13 Page \_\_\_\_ Line \_\_\_\_ should read:

14 Reason for change \_\_\_\_\_

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16 Reason for change \_\_\_\_\_

17 Page \_\_\_\_ Line \_\_\_\_ should read:

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19 Page \_\_\_\_ Line \_\_\_\_ should read:

20 Reason for change \_\_\_\_\_

21 Page \_\_\_\_ Line \_\_\_\_ should read:

22 Reason for change \_\_\_\_\_

23 Page \_\_\_\_ Line \_\_\_\_ should read:

24 Reason for change \_\_\_\_\_

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1 STATE OF NORTH CAROLINA )  
2 ) C E R T I F I C A T E  
3 COUNTY OF GUILFORD )4 I, REBECCA J. HUDDY, Notary Public, do hereby  
5 certify that VALERIE LOFTIN was duly sworn by me prior  
6 to the taking of her deposition; that said deposition  
7 was taken and transcribed by me; and that the  
8 foregoing one hundred seventy-eight (178) pages are a  
9 true and accurate transcript of the testimony of said  
10 VALERIE LOFTIN.11 I further certify that I am not of counsel  
12 for or in the employment of any of the parties to this  
13 action, nor am I interested in the result of said  
14 action.15 IN WITNESS WHEREOF, I have hereunto  
16 subscribed my name this 12th day of May, 2004.17  
18  
19  
20 REBECCA J. HUDDY  
21 Notary Public  
22 My Commission Expires July 26, 2005

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